

INTHE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

F.A.O. No. 158 of 1999

Date of decision November 28, 2007

Jaswinder Kaur w/o Harwinder Singh, r/o village Pundher, Tehsil Dasuya, Distt. Hoshiarpur, at present living with her father Gian Singh s/o Sher Singh, r/o village Dadial Kuran, Tehsil Dasuya.

..... Appellant

Versus

Harvinder Singh Depoy No. 3390890 L. s/o Sh. Darshan Singh s/o Puran Singh, r/o Village Pundher, Tehsil Dasuya, Distt. Hoshiarpur, at present C/O 21, Sikh Regiment B. Cop. c/o 56-APO.

..... Respondent

CORAM: HON'BLE MR. JUSTICE SHAM SUNDER

Present: Mr. K. S. Dadwal, Advocate
for the appellant.

Mr. Arun Jain, Advocate
for the respondent.

Sham Sunder, J.

This appeal is directed against the judgment and decree dated 6.9.1999 rendered by the Court of District Judge, Hoshiarpur vide which the petition under Section 13 of the Hindu Marriage Act, filed by the husband-respondent, herein, was accepted and the marriage between the parties, was dissolved.

2. The facts, in brief, are that on 5.4.1995, the marriage between the parties, was solemnized. The parties cohabited, as husband, and wife at village Pundher District Hoshiarpur. No child was born, from this wed-lock. It was stated that, from the beginning the attitude of the appellant-wife, was hostile towards the parents of the respondent-husband.

He is the only son of his parents, as his both sisters are married. In the first instance, the appellant-wife, stayed with him for about 20 days, and thereafter, he left for his place of posting. The appellant-wife then left the house of his parents, and went to the house of her parents. She had been insisting upon the respondent, to live separately from his parents, but he being the only son of his parents, could not oblige her. At times, when he used to come, on leave, from his place of posting, he used to bring the appellant-wife from her parents house. The sister and brother-in-law of the respondent-husband had gone to the house of the parents of the appellant to bring her back but to no avail. On one occasion, she stayed for one month, with his mother, in the absence of the respondent-husband, but her attitude remained the same. She was not taking meals, cooked by his mother. In September, 1995 the father of the appellant-wife came to the house of the parents of the respondent and took her with him. Thereafter, she did not come back to the house of the respondent. The respondent-husband, had also brought some money, for the construction of his house, and handed over the same, to the appellant-wife, but, on demand, she refused to give back the amount. It was further stated that the appellant-wife was torturing the respondent-husband and his parents. She was also instigating him, against his parents, and levelling false allegations, against them. Many Panchayats were convened to bring back the appellant-wife but to no avail. Ultimately, a petition under Section 13 of the Hindu Marriage Act, 1955 amended up to date, was filed, by the respondent-husband, against the appellant-wife, on the grounds of cruelty and desertion.

3. The appellant-wife put in appearance, and filed written statement, wherein she admitted the marriage, between the parties. It was

also admitted that the parties cohabited as husband and wife. It was also admitted that no child was born, from this wedlock. It was denied that the appellant-wife ever asked the respondent-husband, to live separate from his parents. It was further stated that the husband and his parents levelled false allegations of unchastity against her. It was denied that any amount was given by her husband. It was also denied that she deserted the husband with an intention to put an end to the matrimonial ties. On the other hand, it was stated that she and her parents convened many Panchayats and asked the respondent-husband, to rehabilitate her in his house, but to no avail. She filed a complaint under Section 498-A of the Indian Penal Code against the respondent and his parents which was pending in a Court at Dasuya. The remaining averments, were denied being wrong.

4. On the pleadings of the parties, the following issues were struck:-

“1. Whether the respondent has treated the petitioner with cruelty? OPP.

2. Whether the respondent has deserted the petitioner without sufficient cause for two years immediately preceding the presentation of the petition? OPP.

3. Relief.”

5. After hearing learned Counsel for the parties, and, on going through the evidence, on record, the trial Court, came to the conclusion, that it was not proved that the wife ever treated the husband with cruelty. However, the trial Court, held that the wife deserted the husband, for a continuous period of two years immediately preceding the filing of the petition without any sufficient cause with an intention to end the matrimonial ties. Ultimately, the petition was accepted, on the ground

of desertion.

6. Feeling aggrieved, against the judgment and decree dated 6.9.1999, passed by the trial Court, the instant appeal was filed.

7. Notice of the appeal, was given to the respondent, who put in appearance and contested the same.

8. I have heard the learned Counsel for the parties, and have gone through the record of the case, carefully.

9. The learned Counsel for the appellant, at the very outset, contended that the trial Court, was wrong, in coming to the conclusion, that the appellant-wife, deserted the respondent-husband, for a continuous period of two years immediately preceding the filing of the petition, without any sufficient cause. He further contended that, no worthwhile evidence, to prove this ground was produced by the respondent-husband. He further contended that, on the other hand, it was proved that it was the husband who was guilty of deserting the appellant-wife. The submission of the learned Counsel for the appellant in this regard does not appear to be correct. In **Surjit Kaur Vs. Tirath Singh**, 1979 Current Law Journal (Civil) P&H 534, it was held that that the burden of proof, is on the petitioner-husband to establish the animus deserendi and also the fact that the wife has no animus revertendi, to come back, and resume cohabitation. The principle of law laid down in **Bipin Chandra Vs. Prabhvati**, AIR 1957 SC 176 and **Lachman Utamchand Kirpalani Vs. Meena** AIR 1964 (SC) 40 was to the effect that it is for the petitioner, to prove the factum of separation, and the intention to bring cohabitation permanently to an end (animus deserendi). In **Amarjit Kaur Vs. Babu Singh** 1988(1) The Punjab Law Reporter 131, it was held that the mere fact that the parties were living separately for 7/8

years, in itself, was not sufficient to prove the ground of desertion. The petitioner should further prove that the respondent had no intention to live with him, when she parted company. In **Amarjit Singh Vs. Darshan Kaur**, 1994 (2)RRR 151, it was held that desertion has not been defined, in the Hindu Marriage Act, 1955, or any other Statute. It has to be spelt out, from the conduct of the parties, and the pronouncements of the Courts. Desertion means the separation of one spouse, from the other, with an intention of bringing cohabitation permanently, to an end, without reasonable cause, and consent of the other spouse, and with an intention not to return or resume cohabitation. Mere severance of relations or separation without desertion, is not sufficient. Desertion is not walking out of a house but is withdrawal, from a home. Desertion consists in withdrawal, not from a place, but from the state of things. Desertion for the purpose of being a ground, for dissolution of marriage, is to be ascertained, from the facts and circumstances of each case, keeping in view the status of the parties, their social surroundings, and larger interests of the family. The concept of Hindu marriage, in our country, is a historical development, which has passed through various stages, like human society. The institution of marriage, in our social system, has been considered to be a sacred sanskar, and the insistence is always required to be made, for its continuance, and not its dissolution, unless no other option is left. In **Smt. Satwant Kaur Vs. Gurnam Singh** 2002(1) RCR (Civil) 447, the same principal of law was laid down.

10. Keeping in view the principle of law, laid down, in the aforesaid authorities, now let us see as to whether, the appellant wife deserted the respondent for a continuous period of two years, immediately

preceding the filing of the petition, without any sufficient cause with an intention to put an end to the matrimonial ties permanently. Admittedly, at the time of marriage, the respondent-husband was serving in Military. There is no dispute about the factum, that the marriage was solemnized on 5.4.1995, and the petition was filed on 20.10.1995. It is proved, from the evidence on record, that the wife lived only for 20 days, in the house of her husband, after the marriage. Thereafter, she went to her parents house, as the husband-respondent, went to join his job, he being in military service. Harbinder Singh, when appeared as PW-1, in clear cut terms, stated, in his statement that in September, 1995, he had come on leave to build his house. He handed over a sum of Rs.23,000/-, to the respondent-wife out of the amount obtained by him for construction of his house. Jaswinder Kaur, when appeared as, RW-1, during cross examination stated that she lived with her husband for 20 days after the marriage and when he went back to join his duty, she went to her parents village. She further admitted, in her statement, that her maternal uncle, and her mother, came to see her, in September, 1995, in her in-laws house. She further stated, in her statement, that, at that time, her father-in-law and mother-in-law told them, to take her with them, and then she was taken away by them. She also admitted that she had been living in the house of her parents, since September, 1995. During further cross examination, it was admitted by her, that before the next date, fixed for reconciliation, the Sarpanch had sent a Ruka, to her husband, that he need not come, as she was not ready to live with him. She also admitted, during cross examination, that the military had allotted a family accommodation, to her husband, and she was asked to join him, but she did not go there. Darshan Kaur, mother of

the appellant, when appeared as, RW-2, also admitted that in September, 1995 when she along with her brother, went to the house of the respondent-husband to meet him, they were told that the appellant be taken along with them. She also stated during cross examination, that after the marriage, the appellant lived in the house of the husband only for 20 days, and thereafter he went to join his duty and she came back to her parents house. During the course of cross examination, she further admitted that her daughter moved an application to the Army authorities against the respondent-husband. She further stated that she did not know, if the Army had offered a quarter, so as to enable her daughter, to live with her husband. Balbir Singh, RW-2 stated in his statement, that he appeared before Mahila Mandal. At that time, the appellant-wife had refused to live with the respondent-husband. No doubt, Sh. Shubh Saroch, RW-3, who is an advocate, as also Sarpanch of the village, denied that he wrote letter Ex.P-1, regarding the cancellation of reconciliation proceedings, which were scheduled to be held on a later date. This document bears his signatures. He being an advocate, could not sign the documents, without going through the same. He apparently denied the sending of this document just with a view to help the wife. He even refused to give his specimen signatures, for comparison of his alleged signatures on Ex.P-1. An adverse inference, therefore, could be drawn, that if he had given his specimen signatures, and hand writing, the same would have tallied with his signatures, on Ex.P-1. It could be imagined that the appellant-wife was not ready to live in the house of her in-laws, in the absence of her husband, when he had gone to join his duty in the military. However, no plausible explanation whatsoever, was furnished by the appellant-wife, as to what prevented her,

from going to the official accommodation, which was allotted to her husband, by the military authorities, at the place of his posting, when an offer was given to him in this regard. On the other hand, she flatly refused to live with her husband, even in the official quarter, allotted to him, at the place of his posting. In the absence of her husband, she through-out lived in the house of her parents. Had it been the intention of the appellant-wife, to live in the house of the respondent-husband, she would have certainly joined him, at the place of his posting, when he was allotted the official quarter. Since there was no intention, on the part of the appellant-wife, to live with her husband, she refused to go to the place of his posting, when he had been allotted family accommodation there. This shows her intention to snap the matrimonial ties permanently.

11. No doubt, it was stated by the appellant-wife, in her statement, that she was not ready to live with her husband as she was maltreated and was given beatings, as also the allegations of unchastity were levelled against her. These allegations were denied, by the husband. Even Panchayats were convened by the respondent-husband, and her parents, with a view to bring about reconciliation and to prevail upon the appellant-wife to live in his house. Karnail Singh, PW-3 had accompanied the father of the respondent and gone to village Dadial, where the parents of the appellant-wife resided and met the Sarpanch. At that time, it was agreed that the parties will assemble in a house of a relation in V.Rajpalman. They had gone to village V.Rajpalman, but none came from the side of the appellant-wife. It was told by the Sarpanch that the meeting had been cancelled, and they should arrange another meeting, at village Kolian on 16.5.1997. The letter Ex.P-1, was written by the Sarpanch of the Village, to

the effect that the respondent-husband, and his parents should not come, as the appellant-wife was not ready to accompany them. It is, thus, proved that the respondent-husband was always ready and willing to rehabilitate the appellant-wife, in the house, as his wife, but she refused to live with him, in his house as his wife. On the other hand, she deserted him with an intention to put an end the matrimonial ties forever. The trial Court, was, thus right in holding that the appellant-wife deserted the respondent-husband, for a continuous period of two years immediately preceding the filing of the petition, without any sufficient cause, with an intention to put an end to the matrimonial ties permanently. The contention of the learned Counsel for the appellant-wife being without merit, must fail and the same is rejected. The findings of the trial Court on issue No.2, being correct are affirmed.

12. The findings of the trial Court on issue No.1, have been carefully scrutinized, on the basis of the evidence produced. The trial Court was right, in holding that the husband-did not treat the appellant-wife with cruelty. The findings of the trial Court on issue No.1, being correct, are affirmed.

13. For the reasons, recorded hereinbefore, the appeal being without merit, must fail, and the same is dismissed with costs.

(SHAM SUNDER)
JUDGE

November 28, 2007
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